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In the
Supreme Court of the United States

OCTOBER TERM, 1960

No. 425

WILLIAM H. "BILL" CROSS, FLOYD L. CULLINS, LYMAN GAGE REYNOLDS, ALDEEN CARSWELL AND AMOS HARRIS, JR.

Appellants

-vs-

THE STATE OF FLORIDA

Appellee

AN APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellants appeal from the Order of the Supreme Court of Florida Dismissing the Appeal taken from the District Court of Appeal, First District, entered May 5, 1961, and the order

denying Petition for Re-hearing entered June 6, 1961, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the Appeal and that one or more substantial questions are presented.

OPINION BELOW

The order of dismissal and order denying Petition for Rehearing are not yet reported. A copy of each are attached hereto as Appendix.

JURISDICTION

This appeal was brought to review an order dated May 5, 1961, dismissing an appeal taken to the Supreme Court of Florida, from the District Court of Appeal, First District of Florida and an order entered June 6, 1961, denying a Rehearing by the Supreme Court of Florida.

Notice of Appeal was filed in the Supreme Court of Florida on the 25th day of July, 1961.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. Section 1257(2).

The Appellants, William H. "Bill" Cross, and Floyd L. Cullins were convicted for operating a Lottery and Assisting in the operation of a Lottery and the remaining Appellants were convicted of assisting in the operation of a Lottery in the Criminal Court of Record of Duval County, Florida, and sentenced to prison terms.

This case comes within the purview of the law and procedure as followed and announced in Dollree Mapp, etc., Appellant vs. Ohio, No. 236, Supreme Court of the United States, October Term 1960, June 19, 1961, 81 S.Ct. 1684.

STATUTE INVOLVED

Sections 1 and 4 of Sec. 39.02 Florida Statutes, also referred to as Sections 1 and 4 of Section 39.02 of Chapter 26,880 Laws of Florida 1951; the material portions thereof is set out below and may be found in Vol. I. Florida Statutes 1959 on page 151, and on pages 983 and 986 of General Laws of Florida for 1951.

Chapter 26880 – (No. 401)

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 154

AN ACT Relating to Juvenile Courts; Prescribing the Jurisdiction, Powers, Practice, Pleadings, Procedure, Process and Manner of Service Thereof, Officers and Employees, and Financing of Juvenile Courts and Other Courts the Name of Which Includes the Word "Juvenile"; Prescribing Exclusive Methods of Taking and Detaining Children in Custody and Prohibiting Certain Practices With Reference to Children; Providing the Qualifications, Manner of Election or Employment, Duties, Powers, Compensation, Expenses, and Tenure of Judges and Employees of Such Courts; Authorizing Levying of Taxes and Appropriations of County Funds for the Expense of Operation of Such Courts; and Repealing Inconsistent General Laws and Special Acts.

Be it Enacted by the Legislature of the State of Florida:

Section 1. Chapter 39, Florida Statutes, shall read:

. . . . . .

39.02 Jurisdiction

(1) The juvenile court shall have exclusive original jurisdiction of dependent and delinquent children domiciled, living or found within the county or district in which the court is established. The juvenile court of the county or district in which the child is found shall assume jurisdiction of the child, which jurisdiction shall be exclusive unless the judge thereof, upon approval of the judge of the juvenile court of the county or district in which is located the domicile or usual residence of the child, shall transfer the case and child to the latter court, before or after hearing, in which event the latter court, before or after hearing, in which event the latter court shall thereafter exercise exclusive jurisdiction.

. . . . . .

(4) The Judge of the juvenile court shall have the jurisdiction of a committing magistrate.

QUESTIONS

The following questions are presented by this appeal:

1. Is Florida Statute, Section 39.02 (4), as contained in Chapter 26,880, General Laws of Florida, Acts of 1951, unconstitutional or invalid under Amendment IV, V, and Section 1 of Amendment XIV of the United States Constitution and Section 16 of Article 3 and Section 22 of Declaration of Rights of the Constitution of Florida, whereby said portion purports to authorize a Juvenile Judge to exercise all powers of a committing magistrate; namely, enter alia, issue search

warrants when the title to the Act fails to include a reference thereto and nothing is contained in the title that it was meant to create another court to issue search warrants?

2. Is Florida Statute, Section 39.02 (4), as contained in Chapter 26,880, General Laws of Florida, Acts of 1951, unconstitutional or invalid under Amendment IV, V, and Section 1 of Amendment XIV of the United States Constitution and Section 16 of Article 3 and Section 22 of the Constitution of Florida, as applied to the facts and circumstances of the case at bar?

3. Did the acts of the State Officers in lowering an electronic listening device down into an air shaft from the apartment above, into the apartment that was subsequently searched, to obtain evidence that was used as a basis for probable cause for the issuance of the search warrant constitute an unlawful or unreasonable intrusion into a constitutionally protected area as condemned and defined in the case of Julius Silverman vs. United States, No. 66, decided March 6, 1961, 5 L. Ed. (2d) 734, 81 S. Ct. 679?

4. Did the conduct of the State Officers in procuring the slips, adding machines and other personal property from the apartment of Cross that were placed in evidence by the prosecution violate Amendment IV, Amendment V and Section 1 of Amendment XIV of the United States Constitution and Section 22 of the Declaration of Rights of the Florida Constitution?

5. Whether or not Appellants were denied the substantial right, as given under the VI Amendment of the Constitution of the United States, to be confronted by the witness when their request to examine a memorandum used by a witness during the trial was denied?

6. Whether or not the Supreme Court of Florida, and the District Court of Florida, First District, by their respective failures to render an opinion setting forth whether or not the alleged confessions or admission given or made by Appellants Harris and Carswell preclude this Court from causing due inquiry to be made with respect thereto and is a per curiam decision or dismissal of the appeal a denial of their rights under the Vth Amendment and Section 1 of the XIV Amendment of the United States Constitution?

7. Whether or not the admissions or confessions of Appellants Harris and Carswell, given in evidence over their objections, were freely and voluntarily given and was the consideration thereof by the jury a denial of their rights under Amendment V and Section 1 of the XIV Amendment of the United States Constitution, and also their arrest, search and seizure under the Fourth Amendment of the United States Constitution?

8. Whether or not Appellants were denied a fair trial and due process as guaranteed by the V, VI and XIV Amendments of the United States Constitution and Sections 11 and 12 of the Declaration of Rights of the Florida Constitution by reason of the denial of Motions for Severance by the trial court based upon statements allegedly made by one or more of Appellants that implicated other Appellants, said statements not having been made during the existence or in furtherance of a conspiracy and within the rule as announced in Paoli vs. U. S., 352 U. S. 232, 1 L. Ed (2d) 278, 77 S. Ct. 294?

STATEMENT OF THE CASE

The Appellants were convicted in the Criminal Court of Record of Duval County for offenses against the lottery laws. As a basis for obtaining evidence of probable cause for the issuance of a search warrant, under which evidence was seized and used in the trial, an electronic listening device was lowered down an apartment air shaft into an air shaft of the apartment where some of the Appellants were found when arrested and from which the physical evidence was seized. Appellants contend this was a physical intrusion into a constitutionally protected area and their rights were violated. Also, that a Florida Juvenile Judge is without authority to issue search warrants.

Appellants Harris and Carswell made confessions or admissions that were received in evidence over their objections and it is their claim their rights were violated under Amendment V and Section 1 of the Fourteenth Amendment of the United States Constitution and that their arrests and detention during which the statements were given rendered these statements inadmissable in evidence.

The points referred to above were raised in the trial court by Motion to Quash Search Warrant (R. 877-880) and Motion to Quash Search Warrant and Suppress Evidence (R. 889-893), and additional Grounds of Motion to Quash Search Warrant and Suppress the Evidence (R. 907) and specifically therein it was charged the search violated the 4th and 5th Amendments and all were denied. These points were reviewed in Motion for New Trial (R. 910-916), appropriate objections to the search and seizure and the alleged confession were made during the trial and overruled.

In addition to the foregoing Appellants were denied the right to examine a memorandum used during the trial to refresh the memory of a witness, request therefor having been duly made (Vol. II P. 540, 555, 557-58, 561-562) in violation of the VI Amendment of the right to be confronted by witnesses.

Appellants filed Motions for Severance (R. 894-900) and asked for and were denied a separate trial. The statements made by Harris and Carswell after their alleged illegal arrest and detention implicated or tended to implicate Cullin and Cross and were received in evidence over their objections. This was a denial of the right to be confronted by a witness and right to cross examine. R. 482-83-88).

Each of the foregoing points were raised by Motion for New Trial (R. 910-916) in the trial court and by Assignment of Errors (R. 924-932) in the District Court of Appeal, First District. By Per Curiam decision the judgment of the lower Court was affirmed without comment (R. 956).

These points were again assigned as error (R. 965-967) in the Florida Supreme Court. The appeal therein was dismissed (R. 976). In the Petition for Re-hearing to the Supreme Court of Florida the holding on March 6, 1961, in Silverman v. U. S. 5 L. Ed. (2d) 734, 81 S. Ct. 679, with respect to a physical intrusion into a constitutionally protected area as well also the denial of confrontation of a witness and other matters were presented and not withstanding such was denied (R. 980).

The Supreme Court of Florida and The District Court of Appeal, First District failed or refused to write any opinion on any of the questions raised.

THE QUESTIONS ARE SUBSTANTIAL

Primarily this case is based on a challenge to the legality of a search and seizure of articles allegedly being used in a lottery operation. It is urged, the search of the apartment containing an air shaft into which an electronic listening device was lowered and the seizure therein of said articles was illegal; that the arrest of those appellants found therein, and of Harris and Carswell were illegal and all statements made by them inadmissable; that said Juvenile Judge acted under Sections of Chapter 26,880 of Florida Law 1951, to-wit, Sections 1 and 4 of Section 39.02 and that said sections are unconstitutional because the title to said act fails to contain a provision authorizing issuance of a Search Warrant by such official. Section 16 of Article III, Constitution of Florida provides "Each law enacted in the Legislature shall embrace but one subject and matter properly connected therewith which subject shall be briefly expressed in the title," . . . and that no probable cause existed as a basis for the search warrant as a matter of fact nor was such shown in the affidavit therefor.

Appellants contend the said Section 16 of Article III of the Constitution of Florida has been violated in that the said Juvenile Court law mentions nothing in the title to the act about the issuance of search warrants and that provisions read into the act, where the Legislature gave the Juvenile Court the right to bind over a Juvenile offender to another court for trial is not reasonably susceptible to the construction that it was meant to create another Court or authorize another Court or official to issue search warrants.

In Silverman vs. United States, No. 66, decided March 6, 1961, 5 L. Ed (2d) 734, 81 S. Ct. 679, it was held that the

placement of an electronic listening device into physical contact with a portion of the defendant's house or office – the heating system, an integral part of the premises occupied by him, for obtaining information was in violation of the Fourth Amendment to the United States Constitution. In the instant case the device was lowered down an air shaft 93 inches from an apartment above into the air shaft of the raided apartment. (R. 1015-1018). The facts in the instant case will reveal there was a physical intrusion and even more so than in the Silverman case.

In the case of Dollree Map, etc. Appellant vs. Ohio, No. 236, October Term 1960, 81 S. Ct. 1684, June 19, 1961, being an appeal, it was held that all evidence obtained by searches and seizures in violation of the Constitution is enforceable against the States.

Appellants Harris and Carswell urge their arrest, questioning and evidence obtained as a result thereof were done in violation of Amendment V and Section 1 of the XIV Amendment of the United States Constitution. No probable cause existed for the stopping of the automobile in which they were riding nor had either committed an act in the presence of the officers that warranted their arrest without a warrant. (Vol. II P. 422-427) (P. 432). They were not carried promptly before a committing magistrate and formal charges preferred, nor were they arraigned promptly.

Statements of Carswell and Harris were received in evidence, though made subsequent to the raid and arrest of Appellants and made in the absence of the other Appellants. By the denials of the Motions for Severance and Trial of the defendants jointly the other Appellants were denied confrontation of witnesses and cross examination in violation of Amendment VI of the Constitution of the United States.

The foregoing constitute substantial questions as they relate to encroachments or violations of one's rights under the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

The Florida Supreme Court, and The District Court, First District have declined to rule on any and all of the questions presented, all of which were raised and urged.

A State may not avoid deciding a Federal question, Wolfe vs. State of N. C. 80 S. ct. 1482.

The position of the State of Florida is set forth in its Brief filed in the Florida Supreme Court (R 1045), by the assertion,

> "Moreover, the citation of U. S. authorities in alleged support of such a claim is unthinkable and of no effect whatever in as much as procedure in the Courts of Florida is not in the slightest to be governed by any Federal law cases or otherwise" . . .

Thus it has been successfully argued in the applicable appellate Courts that the cited provisions of the United States Constitution may be ignored when the liberty of an accused is at stake.

CONCLUSION

For the foregoing reasons an order noting probable jurisdiction should be entered or in the alternative this appeal be treated as a Petition for Writ of Certiorari and a writ issued accordingly.

Respectfully submitted,

A. K. Black
P. O. Box 527
Lake City, Florida

Attorney for Appellants

CERTIFICATE OF SERVICE

I Hereby Certify that six copies of the foregoing Jurisdictional Statement were furnished to Honorable Richard W. Ervin, Attorney General of the State of Florida, Tallahassee, Florida, by U. S. Mail on the day of September, A. D. 1961.

Attorney

APPENDIX

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1961

FRIDAY, MAY 5, 1961

WILLIAM H. "BILL" CROSS, FLOYD L. CULLENS, LYMAN GAGE REYNOLDS, ALDEEN CARSWELL, and AMOS HARRIS, JR.

Appellants,

vs.

STATE OF FLORIDA

Appellee.

This cause having this day been considered, it is ordered ex mero motu that the appeal entered in this cause in the District Court of Appeal of Florida, First District, on October 3, 1960, be and the same is hereby dismissed.

A True Copy

TEST:

Guyte P. McCord
Clerk Supreme Court.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1961

TUESDAY, JUNE 6, A. D. 1961

WILLIAM H. "BILL" CROSS,
FLOYD L. CULLINS,
LYMAN GAGE REYNOLDS,
ALLEN CARSWELL and
AMOS HARRIS, JR.,

Appellants,

vs.

STATE OF FLORIDA,

Appellee

On consideration of the Petition for Rehearing filed by Attorneys for Appellants,

IT IS ORDERED by the Court that the said petition be, and the same is hereby, denied.

(SEAL)

A true copy,

TEST:

GUYTE P. McCORD
Clerk Supreme Court.

(I HAVE TODAY MAILED TO THE CLERK OF THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, ORDER OF MAY 5, 1961, DISMISSING APPEAL IN THE ABOVE CAUSE)